No. 496

In the

Supreme Court of the United States.

OCTOBER TERM, 1940.

ELKLAND LEATHER COMPANY, INC.,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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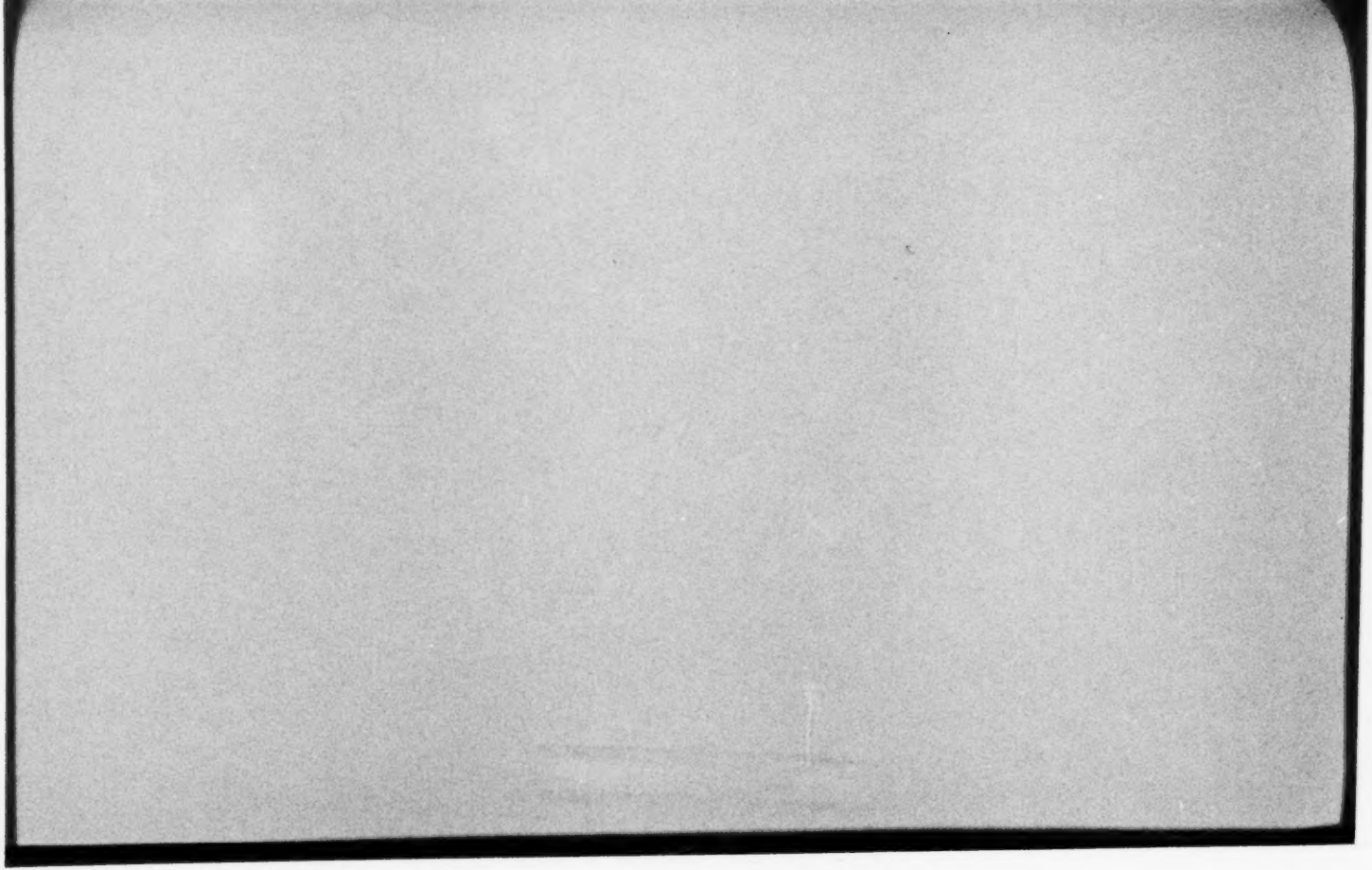

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CITATIONS.

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The petitioner, Elkland Leather Company, Inc., prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Third Circuit, entered on September 10, 1940, enforcing in full the order of the National Labor Relations Board issued against petitioner July 23, 1938.

Opinions Below.

The opinion of the Circuit Court of Appeals (R. 3762), filed August 21, 1940, is not yet reported. The decision and order of the National Labor Relations Board (R. 3667) are reported in 8 N.L.R.B. 519.

Jurisdiction.

The decree of the Circuit Court of Appeals was entered September 10, 1940 (R. 3769).

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (U.S. Code, Title 28, sec. 347), and Section 10(e) of the National Labor Relations Act (Act of July 5, 1935, c. 372, sec. 10; 49 Stat. 453; U.S. Code, Supp. IV, Title 29, sec. 160(e)).

Questions Presented.

1. Does the National Labor Relations Act authorize an order of the Board compelling an employer to post a notice that he will cease and desist from committing specified unfair labor practices?

2. May Section 8(1) of the National Labor Relations Act properly be construed, consistently with the First Amendment to the Constitution, to embrace as an unfair labor practice an employer's written statement of his open-shop policy?

3. Must the findings of fact which the Board is required to state by Section 10(c) of the National Labor Relations Act conform to accepted judicial standards applicable to findings of fact?

Statute Involved.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372; 49 Stat. 449; U.S. Code, Supp. IV, Title 29, sec. 151 *et seq.*) are set forth in the Appendix, *infra*, pp. 19 and 20.

Statement.

Following a charge by Local 37, National Leather Workers' Association, filed July 20, 1937 (R. 8-10), the Board issued its complaint on August 21, 1937 (R. 1-7), and the usual procedural steps ensued, including notice of hearing (R. 11), amended complaint (R. 33-43), answer (R. 16-32), amended answer (R. 44-67), hearing (R. 79-3436), intervention of the Elkland Leather Workers Association, Inc. (R. 81-82), an intermediate report (R. 3470-3528), exceptions thereto (R. 3536-3652), and the submission of briefs (R. 3666). The amended complaint alleged in substance that the petitioner had engaged in unfair labor practices within the meaning of Section 8(1), (2), (3) and (5) of the Act (R. 33-43). The answer and amended answer denied the alleged unfair labor practices and set forth various matters in defense (R. 16-32, 44-67). On July 23, 1938, the Board rendered its decision and order (R. 3667-3726).

No question of fact is raised in this petition. The decision and order of the Board may be summarized as follows:

The petitioner is engaged in the business [1] of tanning hides for sole leather in Elkland, Pennsylvania, a borough with a population of about three thousand (R. 3673-3676). In June, 1937, the petitioner employed 944 production employees and was practically the town's only industry (R. 3673-3676). The petitioner owned 125 houses, which it rented to employees (R. 3676). One of petitioner's stockholders controlled a general store and two of petitioner's officers owned the local electric company (R. 3676). The local bank carried a substantial account of petitioner; the publisher of the local newspaper handled 90% of petitioner's job printing; the local tax collector collected employee

[1] Petitioner stipulated that its business brings it within the jurisdiction of the Board under the Act (R. 3760).

taxes and bills owed by employees to merchants through petitioner; petitioner's office manager was a member of the borough council; one of petitioner's foremen was burgess and chief of police; and another foreman was president of the school board (R. 3677).

Organizational activities among petitioner's employees began early in May, 1937, the first union organizer arriving in Elkland May 24 (R. 3678). In April of 1937 Superintendent Prindle had warned the foremen not to interfere with organizational activities (R. 3678). About May 25 petitioner received a large order for unfinished leather, necessitating the lay-off of four rollers whose work is on finished leather (R. 3703-3704). Two of these were found to have been discriminatorily laid off (R. 3705).[2] About June 15 Local 37 of the union was formally organized and it claimed to have 461 members at this time (R. 3679).

In May or June, 1937, petitioner attached to the pay checks of the employees printed statements reading as follows (R. 3678-3679):

> "You are under no obligation to join any union and cannot be forced to do so as this tannery will always operate as an open shop.
>
> "This company will deal individually with any employee that wishes to do so at any time.
>
> "ELKLAND LEATHER CO., INC."

This statement was held to be designed to discourage organizational efforts (R. 3691).

About June 16 several non-supervisory employees circulated for signature in the plant for several days, during working hours but on their own time, papers headed: "We, the undersigners, prefer a local to a national union" (R.

[2] This finding was contrary to that of the Trial Examiner on this point (R. 3514, 3516).

3680). Several foremen were aware of the circulation of the papers. One foreman and one assistant foreman signed one of the papers (R. 3681). Another foreman and two assistant foremen each made a remark to an employee in support of the petition (R. 3681-3682). Six hundred signatures were procured (R. 3682). In addition, two foremen each made a remark suggesting the formation of an inside organization (R. 3683).

The first processes in tanning leather are carried out in what is known as the beam house (R. 3674). The first step in the process is the soak (R. 3674). During the first fourteen days after the hides are placed in the soak they are in a highly perishable condition and subject to rapid deterioration in the absence of normal attention (R. 3674). They are not completely preserved until after the twenty-eighth day (R. 3674). A stoppage of the soak occurred on June 18 (R. 3684-3685). The Board believed that this was motivated by a desire by the petitioner to foment anti-union activities in Elkland (R. 3692), contrary to the petitioner's contention that the reason was fear of a strike that would damage the hides in process (R. 3692). Stoppage of the soak resulted in the gradual shut-down of the beam house and the consequent lay-off of 160 men in this department (R. 3685). The Board found that two of these men were discriminated against (R. 3709-3711). In order to permit the transfer of married men from the beam house to the shipping department, thirteen single men were laid off in the shipping department on June 19 (R. 3706). The Board found that one of these men was discriminated against [3] (R. 3706-3709).

Five events occurred, participated in by petitioner's non-supervisory employees and townspeople, which were held to

[3] The finding of the Board that the three men in question (two in the beam house and one in the shipping department) had been discriminated against was contrary to the finding made by the Trial Examiner who had heard the evidence (R. 3514, 3515, 3516).

constitute an anti-union campaign brought about and stimulated by petitioner [4] (R. 3683-3688, 3691, 3693).

On the morning of June 26 a union organizer telephoned Superintendent Prindle to arrange for a conference for collective bargaining, following a vote of the union, June 25, to present demands the following day, and, in the event of a refusal to confer, to strike at 2 p.m. (R. 3688). Prindle informed the organizer he had to go out of town, and it was agreed to let the matter stand until 4 p.m. (R. 3688). At about 11 a.m. the organizer received a call that employees in the cut-sole department had been laid off [5] (R. 3688). Believing petitioner was acting in bad faith, he gave instructions to have the demands presented to Prindle, and if Prindle would not consent to a conference, to call the strike

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[4] These were:

(1) the drafting, printing and mailing by the editor of the local newspaper (June 17-19) of a lengthy anti-CIO statement which was signed by 53 persons, including the leading business and professional men (R. 3683), and which contained the sentence: "And from a reliable source it is understood that the tannery will shut down before the demands of the CIO will be accepted" (R. 3684);

(2) advice to union organizers to leave town to avoid trouble by a group of men, including one of petitioner's time keepers, on June 22 (R. 3685), after which the organizers left town in their automobile, followed by about 20 other automobiles (R. 3686);

(3) the meeting of June 24 by a group of non-supervisory employees who had circulated the local preference paper, at which meeting a lengthy petition directed to petitioner was drawn up announcing the formation of an association and demanding an increase in the soak (R. 3686, 3687);

(4) the printing and free notorization of CIO withdrawal forms by the borough tax collector (R. 3687, 3688);

(5) the meeting of June 27, a second "restore the soak" meeting (R. 3689).

[5] Because of surplus stock on hand and a decline in the shoe market, 23 employees in the cut-sole department were laid off on June 5, 15 more on June 19 and the remaining 22 on June 26 (R. 3715). There was no discrimination in any of these lay-offs (R. 3715). On June 28 operations in the department were resumed without discrimination (R. 3715).

(R. 3689). The demands were left in a sealed envelope with Prindle's secretary at 12.30 p.m., during his absence (R. 3689), and as prearranged the men walked out on strike at 2 p.m. (R. 3689). Prindle telephoned the organizer at 4 p.m. as agreed (R. 3689). The strike was found by the Board to have been called because no other course remained open to the union in the face of petitioner's anti-union conduct (R. 3720). On July 6 five striking employees threw stones at automobiles of employees on their way to the plant and were later convicted of rioting [6] (R. 3721, 3744-3751), offenses which the Board did not consider of sufficient gravity to warrant their exclusion from reinstatement (R. 3721).

On June 29 Williams, the local attorney, representing the "restore the soak" group, urged Prindle to increase the soak in view of the fact 650 employees had signed the petition (R. 3690). Prindle, three days before, had refused a similar request on the grounds he would do nothing until he consulted company officials in Boston (R. 3690). On orders from his superiors Prindle partially resumed the soak on June 30 (R. 3690, 3691), which was gradually increased thereafter (R. 3691).

As a result of negotiations carried on through the efforts of Federal and State Conciliators, the union and petitioner entered into a strike settlement agreement on July 10, providing for the termination of the strike and the return of strikers except those who had engaged in violence, as work progressed through the factory (R. 3693, 3694).

This agreement was read to the local July 11 and the strike called off (R. 3694). A misunderstanding as to the process of reinstatement occurred when 200 strikers assembled the next morning (July 12) at the company's plant (R. 3695). A committee representing the union conferred with representatives of the petitioner relative to the manner of reinstatement of the strikers which resulted in the

[6] These five men were fined $50 each (R. 3744-3751).

misunderstanding referred to (R. 3695). One of the representatives of petitioner stated that he would communicate with the conciliators (R. 3695). The union committee reported the result of the conference to the men, who voted to resume the strike (R. 3696). The Board found that the calling off of the strike for one day was pursuant to the strike settlement agreement in which the minds of the parties never met (R. 3720). Petitioner sent letters to the strikers offering them reinstatement, hired no new employees and negotiated with the union further in an unsuccessful attempt to settle the strike (R. 3696). The Board held petitioner did not engage in the alleged unfair labor practice of failing to reinstate and employ the strikers on July 12 (R. 3698).

Meanwhile, on July 2, a group of non-supervisory employees who had been connected with the "restore the soak" group (R. 3686) consulted Attorney Williams in regard to the establishment of a labor organization (R. 3698). The Elkland Leather Workers Association, Inc., was formed, 600 employees having signed the articles of incorporation by July 7 (R. 3699). A demand for collective bargaining was made on July 8 (R. 3699) and a collective bargaining agreement was entered into between petitioner and the Association on July 13 (R. 3699). There was no direct participation by the petitioner in the organization and administration of the Association as incorporated other than membership therein by foremen (R. 3702), non-active membership by foremen being provided for in the by-laws (R. 3700).

The Board concluded that the statement of open-shop policy, the acquiescence and support of foremen in the circulation of the local preference paper and the stoppage of the soak constituted interference, restraint and coercion within the meaning of Section 8(1) of the Act (R. 3691-3693). The Board further concluded that petitioner had dominated and interfered with the Association within the

meaning of Section 8(2) of the Act (R. 3702), and had discriminated against five employees within the meaning of Section 8(3) of the Act (R. 3722). The Board held, however, that the petitioner had not discriminated against 23 other employees alleged to have been discriminated against (R. 3722, 3723). Finding that the union did not represent a majority of the employees (R. 3717-3718), the Board held that petitioner had not violated Section 8(5) of the Act (R. 3718).

The Board ordered petitioner to cease and desist from committing violations of Section 8(1), (2) and (3) of the Act and from giving effect to its contract with the Association (R. 3723, 3724). As affirmative action the Board ordered petitioner (1) to withdraw all recognition from and completely disestablish the Association as a collective bargaining representative; (2) to reinstate and make whole the five employees found to have been discriminated against; (3) to reinstate the 230 strikers; and (4) to post notices in conspicuous places in its plant that petitioner will cease and desist in the manner aforesaid, that petitioner completely disestablishes the Association, and that the agreement with it is void (R. 3724, 3725).

The Board filed a petition for the enforcement of its order in the Circuit Court of Appeals for the Third Circuit on July 20, 1939 (R. 3733-3738). Petitioner filed its answer on August 22, 1939, stating that the Board's conclusion and order were not based on findings of fact and that the Board's order was contrary to the provisions of the Act and beyond the purview of a proper interpretation of the Act (R. 3739-3741). On August 21, 1940, the court filed its opinion directing the entry of a decree enforcing in full the order of the Board (R. 3762). This decree was entered September 10, 1940 (R. 3769-3772).

Specification of Errors to be Urged.

The Circuit Court of Appeals for the Third Circuit erred—

(1) In holding that the Act authorizes the Board to issue an order compelling petitioner to post a notice that it will cease and desist from committing unfair labor practices found by the Board to have been committed in violation of the National Labor Relations Act.

(2) In holding that the issuance of a statement of open-shop policy was an unfair labor practice within the meaning of Section 8(1) of the Act.

(3) In not holding that the Board had failed to comply with its duty under Section 10(c) of the Act to state its findings of fact.

Reasons for Granting the Writ.

1. The decision of the court below affirming the order of the National Labor Relations Board requiring the petitioner to post a notice that it will cease and desist from committing certain specified unfair labor practices is in direct conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *Art Metals Const. Co.* v. *National Labor Relations Board,* 110 F. (2d) 148, and with the decision of the Circuit Court of Appeals for the Fourth Circuit in *Hartsell Mills Co.* v. *National Labor Relations Board,* 111 F. (2d) 291,[7] and of the Circuit Court of Appeals for the

[7] Other decisions by the Fourth Circuit Court of Appeals to the same effect include *National Labor Relations Board* v. *A. S. Abell Co.,* 97 F. (2d) 951, 958, 959; *National Labor Relations Board* v. *Eagle Mfg. Co.,* 99 F. (2d) 930, 932; *Virginia Ferry Corp.* v. *National Labor Relations Board,* 101 F. (2d) 103, 106; *National Labor Relations Board* v. *Nebel Knitting Co.,* 103 F. (2d) 594, 595; *Burlington Dyeing & Finishing Co.* v. *National Labor Relations Board,* 104 F. (2d) 736, 739; *Mooresville Cotton Mills* v. *National Labor Relations Board,* 110 F. (2d) 179, 184.

Sixth Circuit in *National Labor Relations Board* v. *Louisville Refining Co.*, 102 F. (2d) 678, 681.

This question, and the cases which have considered it, are presented at length in the opinion of Judge Learned Hand in *Art Metals Const. Co.* v. *National Labor Relations Board*, (C.C.A. 2) 110 F. (2d) 148, 151. Judge Hand there shows the conflict of authorities on this question, and also states his view that the point was not passed upon by this Court in *National Labor Relations Board* v. *The Falk Corp.*, 308 U.S. 453, saying, at page 151:

> "From the way in which the case came up [to the Supreme Court] it would seem that the court could not have had this point before it, and, whether it did or not, certainly the opinion does not suggest that it meant to pass upon it. We regard the question as open and we think that the Fourth Circuit is right."

The court below cited the *Falk* case in support of its conclusion on this point (see R. 3768). Thus the conflict in interpretation of this Court's decision in the *Falk* case is clear. It seems unnecessary to elaborate further here the conflict between the various Circuit Courts of Appeals on this question, since the point is so fully stated in the opinion of Judge Hand referred to above. The conflict is also disclosed in the full discussion set forth in the opinion of Judge Parker in the *Hartsell Mills* case, 111 F. (2d) 291, 293-294.[8]

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[8] Cases decided since the *Art Metals* case adopting a contrary position are: *Fort Wayne Corrugated Paper Co.* v. *National Labor Relations Board*, (C.C.A. 7) 111 F. (2d) 869, 873; *National Labor Relations Board* v. *Somerset Shoe Co.*, (C.C.A. 1) 111 F. (2d) 681, 691; and *Continental Oil Co.* v. *National Labor Relations Board*, (C.C.A. 10) 113 F. (2d) 473, 485. The Second Circuit has since reaffirmed its view in *National Labor Relations Board* v. *Yale & Towne Mfg. Co.*, decided Aug. 16, 1940. See also *Kansas City Power & Light Co.* v. *National Labor Relations Board*, (C.C.A. 8) 111 F. (2d) 340, 355-357.

The conflict on this point is expressly recognized by the Board itself in its petition to this Court for certiorari in *National Labor Relations Board* v. *Express Publishing Co.*, No. 442, October Term, 1940, where it says (p. 10) that "the circuit courts of appeals have differed concerning the form of notice which may be required." The question in this case is not of the right of the Board to require that some notice be posted, but rather of the power of the Board to compel the petitioner to post a notice which in substance amounts to an acknowledgment that it has committed unfair labor practices which it denies that it has committed. The conflict with respect to notices of such tenor is expressly recognized in the Board's petition herein referred to.[9]

2. The decision of the court below affirming the determination of the Board that the petitioner committed an unfair labor practice by stating to its employees its open-shop policy is in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in *National Labor Relations Board* v. *Union Pacific Stages*, 99 F. (2d) 153, and with the decisions of the Circuit Court of Appeals for the Sixth Circuit in *Midland Steel Products Co.* v. *National Labor Relations Board*, 113 F. (2d) 800, and *National Labor Relations Board* v. *Ford Motor Company*, (C.C.A. 6) decided Oct. 8, 1940.

In the *Union Pacific Stages* case the court said (p. 163):

> "The evidence shows that the Company was conducting its business on the open shop basis; in doing so

[9] It will be no answer for the Board to say that this matter is no longer one of public importance since it does not now require notices of the sort involved in this case. The fact remains that it did order such a notice here, that that order was sustained by the court below, and the decision of the court below on that point is in conflict with decisions in several other circuits. The matter will not cease to be of importance unless the Board will apply its changed policy to cases like the present one.

> the respondent was within its legal rights. If the talk of Walsh its president, amounted to no more than a declaration of that policy it did not violate the Act."

Later in the same opinion the court said (pp. 178-179):

> "It is difficult to think that Congress intended to forbid an employer from expressing a general opinion that an employee would find it more to his advantage not to belong to a union. Had Congress attempted so to do it would be in violation of the First Amendment, U.S.C.A. Const. Amend. 1. The right of workers to organize freely must be conceded. It is a natural right of equal rank with the great right of free speech, protected by the Constitution. But the right of the workers to organize is not destroyed by expressions of opinion of the employer or employee, such as referred to above."

In the *Midland Steel* case a statement by an employer assumed by the court to be an appeal to individual bargaining was held not forbidden by the Act (113 F. (2d) 800, 803-804). The *Ford Motor Company* case contains a full discussion of the interpretation of the Act as applied to employer statements in the light of the First Amendment.

In the present case the court below says (R. 3766):

> "The Leather Company argues that its statement of open-shop policy delivered with the pay checks was not unfair. We cannot agree. On the contrary we think that this statement, issued on the first indication of Union activity, 'was manifestly designed to discourage organizational efforts.' "

The court below thus holds in substance that a statement of open-shop policy, unaccompanied by inducements or threats, is an unfair labor practice, directly in conflict with

the conclusion of the Circuit Courts of Appeals for the Sixth and Ninth Circuits. In reaching this result, the court below did not even refer to the First Amendment, which the Sixth and Ninth Circuits believed of equal importance with the right of workers to organize freely. It should not be overlooked that the First Amendment is important here, not merely because of its own direct force, but because of the clear rule that the statute on which the Board's power alone rests should be construed in such a way as to avoid any serious constitutional question. Cf. *United States* v. *Delaware & Hudson Co.*, 213 U.S. 366, 407-408.

This question is an important one constantly arising in the administration of the National Labor Relations Act.[10] This Court should relieve the confusion now existing in the Circuit Courts of Appeals by establishing the standards which control the question of the extent to which an employer may properly go in making communications to his employees.

3. The decision below is in its effect in conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit in *National Labor Relations Board* v. *Thompson Products*, 97 F. (2d) 13.

In the *Thompson Products* case, the court said (p. 13):

> "The finding of facts of the Board is not in the proper form. It has mingled therein statements of witnesses and expressions of opinion. No reference should be made to the evidence nor any discussion injected into the ultimate findings of facts upon which the Board rests its order. There should be a clean-cut statement

[10] See, for example, the *Ford Motor Company* cases, 14 N.L.R.B. 346, 19 N.L.R.B. No. 79, 23 N.L.R.B. No. 28, 23 N.L.R.B. No. 46, and *Jefferson Electric Company* v. *National Labor Relations Board*, (C.C.A. 7) 102 F. (2d) 949, 956.

> of the ultimate facts without incorporating therein the evidence or the reasoning by which the Board arrived at its finding. If the Board desires to discuss or emphasize any part of the evidence or give its reason for its findings, it should do so in the form of an opinion or memorandum which should not be incorporated into, or connected with, the special finding of facts."

Section 10(c) of the Act provides that where the Board concludes that there has been an unfair labor practice, "then the Board shall state its findings of fact." The Board is thus specifically directed to make "findings of fact." In the present case, this requirement of the statute has in no fair sense been met.[11] The Board's decision is rather "an argumentative narrative," to use the words applied by

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[11] A portion of the decision is, indeed, entitled "Findings of Fact" (R. 3673-3721). Analyzing this, it is found to consist of 566 sentences, of which 20 are footnote statements, 17 are quoted verbatim from exhibits, and 13 are explanatory of the form of the Board's order. This leaves a total of 516 sentences which may reasonably be taken as statements meant by the Board to be findings of fact. Of these 516, however, 114 are recitals of specific items of evidence, 13 are general recitals of evidence, 5 are statements of the pleadings, 8 are merely repetitious, and 52 contain only statements of opinion, belief, contentions, arguments, rulings, reasoning and comments. This group totals 192 or 37% of the total so-called findings of fact.

Consider the following statements selected at random: "We rather believe . . ." (R. 3692); "It is entirely possible that . . ." (R. 3717); ". . . it is certainly unlikely that . . ." (R. 3701); "It has been our experience that . . ." (R. 3691); "Moreover, it is odd . . ." (R. 3705); "It was apparently the theory of counsel . . ." (R. 3696); "The evidence . . . is not entirely convincing, and it may be that . . . " (R. 3714); "Even assuming . . ." (R. 3692); "Strike action was evidently thought necessary . . ." (R. 3719); "The Board has on former occasions considered . . ." (R. 3721); "Although there is no evidence . . . it seems to us that some consideration would normally have been extended . . ." (R. 3708-3709).

Judge Learned Hand to a similar situation in *Western Union Tel. Co.* v. *National Labor Relations Board,* decided by the Second Circuit Court of Appeals on August 9, 1940. This is a matter of real consequence in the fair administration of the Act. By the terms of Section 10(e) and (f) of the Act, as applied in the decisions of this Court, the "findings of fact" of the Board, when supported by evidence, are conclusive. When the Board includes evidentiary matters, and comment, and opinions, in its so-called "findings of fact," the parties are put at a serious disadvantage,[12] and the task of reviewing courts is greatly increased. In the interests of the proper administration of the Act and fairness to respondents before the Board, the Board should be required to prepare proper findings of fact which are confined to the function of findings of fact. The contrast is great between the findings in the present case and the type of findings which are habitually prepared by the Board of Tax Appeals or the Federal Trade Commission. There is no reason why the same standard should not be maintained in labor cases as in tax and trade cases.

This question was fully and fairly presented to the court below in the petitioner's brief there (pp. 8-12). The court below, however, chose not to mention the question. Its decision, nevertheless, sustained the order of the Board. The effect of the decision below, therefore, is to sustain a procedure which was defective under the standard recognized by the Sixth Circuit Court of Appeals in the *Thompson Products* case, quoted above.

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[12] For example, it has been held that, when a party is cited for contempt of a decree enforcing a Board order, the decision of the Board must be examined to define the unfair labor practices covered by the order. *National Labor Relations Board* v. *Pacific Greyhound Lines,* (C.C.A. 9) 106 F. (2d) 867, 871. Consequently if the findings of fact are not clearly and separately stated, a party may have serious difficulty in endeavoring to comply with the order of the court and much fruitless controversy may be engendered.

The matter is closely analogous to the question decided by this Court in *Interstate Circuit* v. *United States,* 304 U.S. 55. There, this Court held that it is the duty of a District Court, under former Equity Rule 70½, to make special formal findings of fact. In setting aside the decree of the lower court there and remanding the case with directions to make proper findings of fact, this Court said, at page 56:

> "The opinion of the court was not a substitute for the required findings. A discussion of portions of the evidence and the court's reasoning in its opinion do not constitute the special and formal findings by which it is the duty of the court appropriately and specifically to determine all the issues which the case presents."

This decision under this Court's rules that lower courts make proper findings of facts should be equally applicable to the specific requirement of Section 10(c) of the Act that the Board shall make findings of fact. This seems to be clearly recognized in this Court's opinion in *Ford Motor Company* v. *National Labor Relations Board,* 305 U.S. 364, where, at page 373, the *Interstate Circuit* case is cited in an opinion dealing with the Labor Board.[13]

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[13] The conflict between the decision below and that in the *Thompson Products* case is emphasized by the opinion of the Circuit Court of Appeals for the Tenth Circuit in *Swift & Co.* v. *National Labor Relations Board,* 106 F. (2d) 87. The court in that case reached the same result as the court below here, saying (p. 94): "It is not essential that the Board state its findings in formal style . . . While it would have been better form for the Board to have set forth separately a clean-cut statement of the ultimate facts, without incorporating therein references to evidence or the reasoning by which the Board arrived at its findings [citing the *Thompson Products* case], we are of the opinion that the findings here are sufficiently definite to inform the petitioner of the basic facts found by the Board, upon which it predicated its ultimate conclusions and decision."

Conclusion.

Wherefore it is respectfully submitted that for the reasons stated the petition for certiorari should be granted.

Respectfully submitted,

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